

The Public Employment Relations Act and Illegal Strikes: How Strikes Come About and How the Legislature Can Fashion an Effective Deterrent

Paul Kersey, Director of Labor Relations
The Mackinac Center for Public Policy

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The Michigan Legislature is confronted with a critical situation, one that has been created by unions that are considered the legal representatives of teachers throughout the state. These unions have positioned themselves to call illegal strikes statewide, largely in response to revisions to the state's Emergency Financial Manager law and not in response to any legitimate labor dispute with local school boards.

It is incumbent upon the legislature to formulate a response that will bring strike posturing to an immediate end. The public's interest in maintaining a functioning system of education should be paramount.

The legislature is understandably looking to stiffen penalties against illegal strikes, but must find a formula that provides the maximum deterrent while protecting the rights of innocent parties, including teachers who are caught in the middle of a strike they did not want.

To formulate an effective remedy, the legislature should put aside the romantic view of labor unions that is too often promoted in Michigan, and develop a clear understanding of the dynamics of labor relations under the Public Employment Relation Act, and in particular how illegal strikes come about.

- **WHO CALLS STRIKES?** The primary responsibility for illegal government employee strikes lies with union officials – they are the ones who orchestrate strikes.
- **THE ROLE OF EMPLOYEES:** The role of employees in orchestrating strikes is fairly limited. Union strike votes, especially this spring, appear to have been rigged in many cases – secret ballots are not counted openly, vote tallies not announced. In one case a teacher was told that the ballots were held so that union officials could know who they could count on – actual approval of “job actions” was presumed.
- **THE POSITION OF INDIVIDUAL WORKERS VIS-À-VIS THE UNION:** The position of individual employees is precarious – the union is your representative whether you support them or not – they not only bargain the collective bargaining agreement they also process grievances on your behalf. An individual teacher is generally not allowed to bring in his or her representation.
- **FOR UNION OPPONENTS, CROSSING THE PICKET LINE IS RISKY:** The “Duty of Fair Representation” limits disparate treatment, but crossing union officials still carries risks for teachers.

- **INTERNAL UNION DEMOCRACY IS AT BEST UNEVENLY PRACTICED:** We cannot assume that a strike has the support of a majority of teachers, but we should bear in mind that union officials are in a position to put a significant amount of pressure on teachers.

The bottom line is that teachers are not completely without responsibilities in strike situations, but the primary responsibility for illegal strikes lies with union officials. The sharpest penalties should fall on them.

To find an effective penalty against unions for illegal strikes, the legislature should understand the following:

- **FOLLOW THE MONEY:** Michigan law allows for contracts in which unions are effectively guaranteed hundreds of dollars per employee in union dues and/or agency fees. These funds are provided by taxpayers, and are supposedly budgeted as employee wages, but they are redirected to union officials with few if any questions asked. MEA alone collects \$60-70 million annually in agency fees. An effective penalty will be one that cuts off these funds.
- **COLLECTIVE BARGAINING IS NOT AN INALIENABLE RIGHT:** At least not for government employees. The US Supreme Court has ruled that government agencies are not required to bargain collectively with employees.¹ Employees do have the right to join unions, which are free to offer proposals of their own, but there is no obligation, under the Federal or State constitutions, that local governments or school districts bargain with unions as the exclusive representative of their employees. Collective bargaining for government employees, including public school teachers, is a privilege, not a right.
- **AN ILLEGAL STRIKE IS THE ULTIMATE ABUSE OF THE COLLECTIVE BARGAINING PRIVILEGE:** This is especially true in the current situation, where teachers unions are contemplating strikes against school districts in response to decisions made by the legislature in Lansing. This is not a labor dispute where action against employers is justified, even in the absence of a strike prohibition. But leaving that aside, collective bargaining is a privilege that the legislature has extended to local employees for the purpose of encouraging constructive labor relations. Strikes in this context represent the ultimate failure of collective bargaining. Therefore it is entirely appropriate, even necessary, that collective bargaining privileges be suspended in the wake of a strike.

Suspending collective bargaining privileges is the appropriate penalty for illegal strikes.

- **FINES AGAINST UNIONS ARE PROBLEMATIC:** They leave the union in place. Money lost in fines can be recouped from future union dues and/or special assessments. Even a “break the bank” fine leaves open the possibility that the current union will liquidate and reform under another name. Meanwhile school district officials must still bargain with the same union officials who called the strike – a perverse result.

- **PENALTIES AGAINST INDIVIDUAL TEACHERS ARE ALSO PROBLEMATIC:** Given the consequences it is only fair to give teachers an opportunity to explain that they did not take part. Even if all protests are rolled into a single hearing the process is still likely to be time consuming. And an individual teacher's "participation" may be the product of undue pressure or even deception (for instance, by presenting the result of a rigged strike vote as representative of the opinions of fellow teachers) leveled by teacher union officials. Again, this is not to say that teachers should not suffer any consequences, but penalties against individual teachers should be less severe than those suffered by the union officials who instigate strikes and manipulate teachers into joining them
- **SUSPENDING COLLECTIVE BARGAINING IS THE APPROPRIATE PENALTY FOR STRIKING TEACHERS:** Their ability to engage in concerted activities with other teachers will be sharply limited (but not completely eliminated – the union can continue as a voluntary association)
- **SUSPENDING COLLECTIVE BARGAINING WILL PROVIDE A STIFF INCENTIVE FOR UNION OFFICIALS TO PRECLUDE STRIKES:** Mandatory dues collection will cease, and their influence in the district will be lost as long as the suspension is in effect. The suspension of bargaining privileges will prevent them from attempting to regain bargaining power and dues by reforming the union under another guise.

Therefore the best policy would be one in which the penalty for illegal strikes, by all government personnel, is the immediate suspension of collective bargaining in the relevant bargaining unit/units for a period of three to seven years . Such a penalty is allowed under both Federal and State Constitutions, is appropriate given the nature of the offense, and is likely to serve as an effective deterrent.

As a practical matter, the legislature cannot absolutely prevent strikes. Employees are free to consult with coworkers and they retain the right to leave their jobs if they are unhappy with working conditions. But the legislature is under no obligation to promote collective bargaining and certainly under no obligation to facilitate strikes or to provide any assistance to organizations that are prone to instigate them. Again, collective bargaining is a privilege, not an inalienable right, and when a privilege is abused it is entirely appropriate that it be suspended.

- ¹ Smith v. Arkansas Highway Employees, 441 US 463 (1979)